# EMAIL COMMUNICATIONS IN THE DEBT COLLECTION INDUSTRY

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#### I. INTRODUCTION

Nearly seventy five per cent (75%) or 204.3 million Americans have access to the Internet from home. As a result, consumers are using the Internet for a number of online services. *FiSite Research*, a research company specializing in the online Financial Services sector recently surveyed 1,000 consumers and an overwhelming eighty-four per cent (84%) of those surveyed rated the concept of an online service facilitating payment of overdue bills as very appealing. This type of service replaces a telephone call or letter from the creditor with an electronic message (e.g. e-mail) notifying the consumer when a bill is overdue and provides various methods of satisfying their debt. Those surveyed further indicated that the "ease and convenience of managing late payments...attractive" because it avoids confrontation with a collections representative.

E-mail is "the day's evolutionary hybrid of traditional telephone line communications and regular postal service mail" because it provides instantaneous transmission of information.<sup>5</sup> E-mail avoids confrontation and concurrently allows the

<sup>4</sup> Paul Jamieson, *Online Banking: Consumers See Broad Appeal for Online Collections*, FISITE RESEARCH (October 13, 2004).

<sup>&</sup>lt;sup>1</sup> Nielsen//NetRatings, *Three Out Of Four Americans Have Access to the Internet, According to Nielsen/NetRatings*, March 18, 2004 available at http://www.nielsen-netratings.com/pr/pr\_040318.pdf.

<sup>&</sup>lt;sup>2</sup> Research Brief: Online Financial Services Research and Advisory, FISITE RESEARCH (October 2004).

 $<sup>^3</sup>$  Id.

<sup>&</sup>lt;sup>5</sup> Hallow v. Hallow, 747 N.Y.S.2d 704, 706 (N.Y. Sup. Ct, Oswego Co. 2002).

recipient the convenience of when and where to open it. Thus, in the debt collection industry, often thought of as being very confrontational, the online service concept will facilitate "consumers who require remedial support [in becoming] more responsible in their payment habits" to satisfy their debt than under the traditional modes of collection. However, because this type of service is conceptually new, businesses providing it are few and far between. Therefore, businesses implementing this type of service now will reap the benefits and rewards of tomorrow.

### II. DISCUSSION

# A. The FDCPA and Other Applicable Laws and Rules

The Fair Debt Collection Practices Act ("FDCPA"), the primary law regulating the debt collection industry does not prohibit the use of e-mail in collecting debt.<sup>8</sup> The FDCPA does not specify the form of communication by which a debt collector<sup>9</sup> may communicate with its debtor.<sup>10</sup> In fact, it defines *communication* as "the conveyance of information regarding a debt directly or indirectly to any person through any medium", <sup>11</sup>

<sup>&</sup>lt;sup>6</sup> See Jamieson, supra note 4, ¶5.

<sup>&</sup>lt;sup>7</sup> See Research Brief, supra note 2. The authors of this article recognize that online services will not cure consumers who already have a mindset of being delinquent, but for consumers who need a little help and who do not wish to file for bankruptcy, online services is the perfect remedy.

<sup>&</sup>lt;sup>8</sup> See 15 U.S.C. §§ 1692 et seq. (the purpose of the statute is to "eliminate abusive debt practices by debt collectors…")

<sup>&</sup>lt;sup>9</sup> In this paper, debt collectors are distinguished from creditors in that debt collectors are subject to the FDCPA, whereas creditors are not.

<sup>&</sup>lt;sup>10</sup> See 15 U.S.C. §§ 1692c, 1692e.

<sup>&</sup>lt;sup>11</sup> 15 U.S.C. § 1692a(2).

including the use of e-mail.<sup>12</sup> The only specificity in regards to communication it provides is when a communication may be made, and if applicable, to whom the communication may be made to.<sup>13</sup> However, where the Legislature has not prohibited the use, it is permissible, similar to postal mail or any other form of communication.

The FDCPA *only* presides over debt collectors who collect consumer debts owed to third parties through means of interstate commerce.<sup>14</sup> The FDCPA broadly defines *debt* as an obligation to pay arising out of a consumer transaction.<sup>15</sup> As mentioned earlier, the FDCPA excludes from its provisions, creditors who have extended credit to the debtor in the first place and who are attempting to collect for its own accounts.<sup>16</sup> Similarly, the FDCPA excludes an assignee or debt purchaser who has purchased a debt before it has defaulted, treating the debt purchaser like an original creditor.<sup>17</sup> The policy behind the exemption is to maintain and promote the industry of lending. If creditors are subject to the FDCPA they will discontinue lending and the industry will come to a halt.

<sup>&</sup>lt;sup>12</sup> See Controlling the Assault of Non-Solicited Pornography and Marketing of 2003, 15 U.S.C. § 7701(a)(1) ("[e]lectronic mail has become...[a] popular means of communication").

<sup>&</sup>lt;sup>13</sup> See Robert A. Montieth, Survey of Wyoming Law: Collecting Debt in Wyoming: The Fair Debt Collection Practices Act as a Trap for the Unwary, 31 LAND & WATER L. REV. 731, 742 (1996).

<sup>&</sup>lt;sup>14</sup> 15 U.S.C. § 1692(a)(6).

<sup>&</sup>lt;sup>15</sup> Hamilton v. United Health Care of La., Inc., 310 F.3d 385 (5<sup>th</sup> Cir. 2002).

<sup>&</sup>lt;sup>16</sup> Teng v. Metropolitan Retail Recovery, 851 F.Supp. 61, 65 (E.D.N.Y. 1994) (creditor is not a "debt collector" within the purview of the FDCPA. However, where the creditor collects under another name that the least sophisticated debtor would think a third party was attempting to collect the debt, the creditor is subject to the FDCPA).

<sup>&</sup>lt;sup>17</sup> See Neff v. Capital Acquisitions & Mgmt Co., 352 F.3d 1118, 1121 n5 (7<sup>th</sup> Cir. 2003); Wadlington v. Credit Acceptance Corp, 76 F.3d 103, 106 (6<sup>th</sup> Cir. 1996).

Even though the FDCPA is the primary statute, there are several other federal, state and local laws that may apply directly or indirectly, to any given debt collection practice. These laws include, but are not limited to: 18

- Fair and Accurate Credit Transactions Act;
- Fair Credit Reporting Act;
- Fair Credit Billing Act
- Equal Credit Opportunity Act and Regulation B;
- Gramm-Leach-Bliley Act and Regulation P;
- Federal Trade Commission Act;
- Federal Privacy Act of 1974;
- Electronic Communications Privacy Act;

### **B.** Addressing Privacy Issues

A concern arising over the use of e-mail is the privacy of information. With the prevalence of hacking and identity theft, privacy of information is of widespread concern. In response, Congress has duly addressed these matters. The financial and banking industry is heavily regulated by several federal statutes governing who they may disclose nonpublic personal information to, what they are permitted to do with such information,

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<sup>&</sup>lt;sup>18</sup> For a more comprehensive list – the other applicable laws that could apply are: Truth in Lending Act and Regulation Z; Community Reinvestment Act; Electronic Fund Transfer Act; Consumer Leasing Act; Credit Repair Organization Act; National Automated Clearing House Association rules; Check Clearing for the 21<sup>st</sup> Century Act and Regulation J; Telephone Consumer Protection Act; Video Privacy Protection Act of 1998; Family Educational Rights and Privacy Act of 1974; Service Members Civil Relief Act of 2003; Bank Secrecy Act/Anti-Money Laundering laws; Office of Foreign Asset Control sanctions; Driver's Privacy Protection Act of 1994; Computer Fraud and Abuse Act; Health Insurance Portability and Accountability Act; Regulation AA; and applicable state laws or local laws.

and how to provide additional security to protect the privacy of debtors.<sup>19</sup> These federal statutes describe at length, the scope of what may be communicated, but similar to the FDCPA, they fail to disclose the method of communication.<sup>20</sup>

The American Bar Association (ABA)<sup>21</sup> believes that "an attorney may transmit information relating to the representation of a client by unencrypted e-mail sent over the Internet without violating [his duty of client confidentiality]...because there is a reasonable expectation of privacy [that is similarly] accorded to U.S. and commercial mail, land-line telephone transmissions, and facsimiles."<sup>22</sup> The ABA further expressed that it would be impractical to avoid of every mode of communication simply because interception is technically possible.<sup>23</sup> If that were the case then every method of communication would be impermissible.<sup>24</sup> Similarly, most state bar associations have considered the very same issue and have addressed similar opinions.<sup>25</sup>

Act"), P.L. 108-159, § 2, 117 Stat. 1952 (December 4, 2003).

<sup>19</sup> See Gramm-Leach-Bliley Act ("GLB"), P.L. 106-102, 113 Stat. 1338 (November 12, 1999); Fair Credit Reporting Act ("FRCA"), 15 U.S.C.S. § 1681 et seq.; Fair and Accurate Transactions Act of 2003 ("FACT

<sup>&</sup>lt;sup>20</sup> See generally, Gramm-Leach-Bliley Act ("GLB"), P.L. 106-102, 113 Stat. 1338 (November 12, 1999).

<sup>&</sup>lt;sup>21</sup> ABA Comm. on Ethics and Prof. Resp., Formal Op 99-413 (Mar. 10, 1999).

<sup>&</sup>lt;sup>22</sup> Id.

<sup>&</sup>lt;sup>23</sup> *Id*.

<sup>&</sup>lt;sup>24</sup> For example, every mode of communication is susceptible to interception and hackers are becoming more educated and finding ways to intercept communications.

<sup>&</sup>lt;sup>25</sup> Hopkins & Reynolds, *Current Development 2002-2003: Redefining Privacy and Security in the Electronic Communication Age: A Lawyer's Ethical Duty in the Virtual World of the Internet*, 16 GEO. J. LEGAL ETHICS 675, 677 (Summer 2003); *see also* De. Bar Ass'n Comm. on Prof. Ethics Op. 01-2; Ohio Bd. Com. Griev. Disp., Adv. Op. 99-2 (1999); Alaska Bar Ass'n Op. 98-2 (1998); Ky. Bar Ass'n Ethics Comm., Adv. Op. E-403 (1998); N.Y. State Bar Ass'n Comm. on Prof. Ethics, Op. 709 (1998); D.C. Bar Op. 281 (1998); N.D. Bar Ass'n Ethics Comm., Op. 97-09 (1997); Pa. Bar Ass'n Comm. on Legal Ethics, Op. 97-130 (1997); S.C. Bar Ethics Adv. Comm., Op. No. 97-08 (1997); Vt. Adv. Ethics Op. 97-5 (1997); Ariz. Adv. Op. 97-04 (1996). (North Carolina, (N.C. Bar Op. 215 (1995)), and Iowa, (Iowa Bar Ass'n Op. 1997-1 (1997)) state bar associations refuse to authorize the use of e-mail)).

A state court affirmed the 1999 ABA opinion holding that e-mail still retains its privilege of confidentiality even though the content is electronically sent.<sup>26</sup> The court further relied on a California statute which provides that "[a] communication between a client and his…lawyer is not deemed lacking in confidentiality solely because the communication is transmitted by…electronic means."<sup>27</sup>

The reason for permitting the use of e-mail is many-fold: (1) the ABA and the state bar associations recognize that unauthorized interception of e-mail is a federal crime.<sup>28</sup> Specifically, the Electronic Communications Privacy Act (ECPA)<sup>29</sup> provides civil and criminal penalties for unauthorized interception.<sup>30</sup> Hence, an added protection governing e-mail privacy;<sup>31</sup> (2) intercepting e-mail is fairly difficult;<sup>32</sup> (3) the risk of inadvertently misdirecting an e-mail is less than misdirecting facsimiles;<sup>33</sup> and (4) the convenience of communicating by e-mail greatly outweighs the risk.<sup>34</sup>

Therefore, if the law, the courts, the ABA and state bar associations who have addressed the issue all recognize that there is a reasonable expectation of privacy

<sup>&</sup>lt;sup>26</sup> City of Reno v. Reno Police Protective Ass'n, 59 P.3d 1212, 1218 (Nev. Sup. Ct. 2002).

<sup>&</sup>lt;sup>27</sup> *Id.* (citing Cal. Evid. Code § 952 (West 1995)).

<sup>&</sup>lt;sup>28</sup> Alan N. Greenspan, *American Bar Association, Forum on Communications Law*, ABA NETWORK, ¶ 8 (2000), *at* www.abanet.org/forums/communication/comlawyer/summer00/greenspan.html; see also ABA Formal Op. 99-413, *supra* note 16 n2.

<sup>&</sup>lt;sup>29</sup> Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848 (1986).

<sup>&</sup>lt;sup>30</sup> ABA Formal Op. 99-413, supra note 20 n2. See also 18 U.S.C.S. § 2511 (1998).

<sup>&</sup>lt;sup>31</sup> Greenspan, *supra* note  $27 \, \P \, 9$ .

<sup>&</sup>lt;sup>32</sup> *Id*.

<sup>&</sup>lt;sup>33</sup> *Id*.

<sup>&</sup>lt;sup>34</sup> See generally id.

afforded to e-mail communications, the use of this method is not precluded from debt collection practices.

## C. <u>Substance of Communications</u>

The FDCPA provides debtors with an extremely important protection by limiting whom the debt collector may contact. <sup>35</sup> This is because the FDCPA is aimed at debt collectors who do not have an ongoing relationship with the debtor and thereby is unconcerned with their opinion. <sup>36</sup> Debt collectors may not communicate with the debtor's employer, relatives of the debtor's spouse, friends or neighbors for any purpose other than to obtain location information. <sup>37</sup> When doing so, "the [collector] must identify itself, state only that he is confirming or correcting location information, and identify his employer only if expressly requested." <sup>38</sup> The United States Senate stated that those types of contacts are not legitimate collection practices and result in "serious invasion[s] of privacy, including loss of jobs." <sup>39</sup> Thus, when a debt collector contacts a

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<sup>&</sup>lt;sup>35</sup> 15 U.S.C. § 1692c

<sup>&</sup>lt;sup>36</sup> Schlosser v. Fairbanks Capital Corp., 323 F.3d 534, 536 (7<sup>th</sup> Cir. 2003).

<sup>&</sup>lt;sup>37</sup> S. Rep. No. 382, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., at 4 (1977) *reprinted in* 1997 U.S.C.C.A.N. 1695, 1699; *West v. Costen*, 558 F. Supp. 564, 576 n5 (W.D. Va. 1983) (location information includes an address, telephone number, and place of employment).

<sup>&</sup>lt;sup>38</sup> *West*, 558 F. Supp. at 564.

<sup>&</sup>lt;sup>39</sup> S. Rep. No. 382, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess., *supra* note 33.

third party, other than the debtor's spouse for purposes other than to obtain location information, courts have found that such debt collector has violated the FDCPA. 40

However, the FDCPA for the most part does not apply to *creditors* who are collecting its own debt in its own name. <sup>41</sup> This exemption seems shocking at first but from a policy stance it makes sense. <sup>42</sup> If creditors extend credit, they should be able to pursue its collection. If creditors were restricted to taxing requirements (e.g. the FDCPA) they would be unwilling to extend credit in the first place. As courts nicely put, "the creditor has and must have the right to take reasonable action to pursue his debtor and collect his debt." However, this does not mean that creditors may collect in any manner as they please. Debtors may still bring actions against creditors under other applicable laws, such as invasion of privacy, <sup>44</sup> harassment, <sup>45</sup> and defamation. <sup>46</sup>

Courts have held that a creditor, as distinguished from a debt collector, may telephone or write a letter to the debtor's employer and notify the employer that there is an outstanding account which the creditor is trying to clear and request that the employer

<sup>&</sup>lt;sup>40</sup> West, supra note 33 at 575-576; see Whatley v. Universal Collection Bureau, Inc., 525 F. Supp. 1024 (N.D. Ga. 1992) (parents of debtor had standing to bring an action when collection agency threatened them by telephone).

<sup>&</sup>lt;sup>41</sup> See Black v. Aegis Consumer Funding Group, 2001 WL 228062 (S.D. Ala. 2001) (creditors are allowed to take reasonable measures to pursue his debtor and persuade payment).

<sup>&</sup>lt;sup>42</sup> See Epps v. Etan Indus., 1998 WL 851488, \*11 (N.D. Ill. 1998) ("[i]n excluding creditors from the scope of the FDCPA, Congress recognize[s] that...creditors...are interested in promoting and maintaining their goodwill with their customers and the public in general").

<sup>&</sup>lt;sup>43</sup> *Id.* at \*5; *Norris v. Moskin Stores, Inc.*, 132 So.2d 321 (Ala. Sup Ct 1961).

<sup>&</sup>lt;sup>44</sup> *Aegis*, 2001 WL 228062.

<sup>&</sup>lt;sup>45</sup> *Id*.

<sup>&</sup>lt;sup>46</sup> *Id*.

speak to the debtor.<sup>47</sup> Divulging information to telegraph handlers who plan on delivering the news to the debtor have likewise been held unactionable.<sup>48</sup> However, where the creditor persistently makes collection calls during late hours to the debtor's residence and workplace despite being requested not to and using hostile, profane and malicious language, the court has held that conduct actionable.<sup>49</sup> Similarly, where the creditor initiates a campaign to harass the debtor by calling six to eight times per day, during late hours at home and at the office over a period of three weeks threatening the loss of employment has also been held actionable.<sup>50</sup>

Therefore, what distinguishes between unactionable and actionable cases is the degree of invasion employed by a creditor in its pursuit to collect. As stated by courts, "mere effort of a creditor...to collect a debt cannot without more be considered...actionable...but where the creditor takes actions which exceed the bounds of reasonableness...the debtor has an action against the creditor for injuries suffered." What is reasonable is determined by the facts and circumstances of each case. 52

## D. A Recognized Alternative

<sup>&</sup>lt;sup>47</sup> Harrison v. Humble Oil Refining, 264 F. Supp 89 (D.C. SC 1967) (telephoned debtor's employer and requested to speak to debtor about satisfying an outstanding account); Household Finance Corp. v. Bridge, 250 A.2d 878 (MD. 1969) (telephoned debtor's employer); Challen v. Town & Country Charge, 545 F. Supp 1014 (N.D. Ill 1982) (letter to debtor's employer informing of an outstanding debt); Turner v. Govt's Employees Financial Corp., 351 F. Supp. 181 (W.D. Pa 1972), aff'm 481 F.2d 1400 (3d Cir. 1973) (mere communication to debtor's employer informing of the existence of a debt).

<sup>&</sup>lt;sup>48</sup> *Hickson v. Home Fed. of Atlanta*, 805 F. Supp 1567 (N.D. Ga. 1992).

<sup>&</sup>lt;sup>49</sup> Household Credit Services, Inc. v. Driscol, 989 S.W.2d 72 (Tex. Ct. of App. 1998).

<sup>&</sup>lt;sup>50</sup> Housh v. Peth, 133 NE.2d 340 (Ohio Sup. Ct. 1956).

<sup>&</sup>lt;sup>51</sup> Aegis, 2001 WL 228062, \*5.

<sup>&</sup>lt;sup>52</sup> *Id*.

Courts have addressed whether using e-mail as an alternative for postal mail is acceptable. The Ninth Circuit allows service of process upon a foreign defendant to be effected by e-mail, if the e-mail is reasonably calculated under the circumstances to apprise the defendant of the action.<sup>53</sup> The Ninth Circuit recognized the limitations of e-mailing but noted that communication over e-mail is "zealously embraced within the business community."<sup>54</sup> Similarly, state courts have followed the Ninth Circuit by allowing service of process upon a foreign defendant by e-mail where under the circumstances it too, is reasonably calculated.<sup>55</sup>

Second, the United States Bankruptcy Courts have been the forerunners of providing online services. <sup>56</sup> Case Management/Electronic Case Filing ("CM/ECF") in federal bankruptcy courts, allow parties to file case documents via the Internet and allow the courts to maintain those documents in electronic form. <sup>57</sup> "ECF will become the norm and mandatory in most jurisdictions." An area which supplements ECF is *e-mail noticing*, which replaces traditional mail containing case information that would be sent

<sup>&</sup>lt;sup>53</sup> *Rio Properties, Inc. v. Rio International, Inc.*, 284 F.3d 1007, 1017 (9<sup>th</sup> Cir. 2002) (e-mailing effected proper service because of a court order).

<sup>&</sup>lt;sup>54</sup> *Rio Properties*, 284 F.3d at 1018 (limitations so recognized include: (1) no confirmation of receipt; (2) limited use of electronic signatures to comply with FRCP Rule 4; and (3) system compatibility problems).

<sup>&</sup>lt;sup>55</sup> Hallow, 747 N.Y.S.2d at 708 (service of process effected to defendant's last known e-mail address); Broadfoot v. Diaz (In re Int'l Telemedia Assoc.), 245 B.R. 713 (Bankr. N.D. Ga. 2000) (under the facts, the Court correctly directed service by e-mail upon defendant); WAWA, Inc. v. Christensen, 1999 WL 557936 (E.D. Pa. 1999) (held that e-mail is an approved method of service with a court order).

<sup>&</sup>lt;sup>56</sup> Case Management/Electronic Filing System (CM/ECF), *available at* http://pacer.psc.uscourts.gov/documents/press.pdf (November 2004) ("the national roll-out of the CM/ECF system for bankruptcy courts started in early 2001").

<sup>&</sup>lt;sup>57</sup> Alane A. Becket, *Consumer Corner*, 22-NOV Am. BANKR. INST. J. 10 (November 2003).

<sup>&</sup>lt;sup>58</sup> *Id.*; *see also* Case Management/Electronic Filing System, *supra* note 54 ("The CM/ECF system for district courts began to roll out nationally in May 2002…and the CM/ECF system for the appellate courts is currently scheduled to begin in late 2004.").

out from the court.<sup>59</sup> Amendments to the bankruptcy rules permit service of documents by electronic means if the parties consent in writing.<sup>60</sup> Therefore, some U.S. bankruptcy courts in their ECF applications set forth an express waiver of the petitioner's right to service of documents by traditional mail while other U.S. bankruptcy courts have made it optional.<sup>61</sup> Therefore, following the same analogy, if e-mails notifying interested parties of the status of their case are allowed in the bankruptcy regime then it is only logical that e-mails be allowed to notify debtors of an amount owed in the debt collection industry.

Another reason why e-mails are a recognized alternative to traditional postal mail can be found in the Electronic Records and Signatures in Commerce law, known as the "E-Sign law." In essence, it states that a signature, contract or other record in interstate or foreign commerce transactions may not be denied legal effect, validity or enforcement simply because it is in electronic form. Subsequently, most courts have enforced the principles of the E-Sign law holding that e-mails are sufficient to meet writing requirements. 4

## E. Compliance with Legislative Intent

<sup>60</sup> Id.

<sup>&</sup>lt;sup>59</sup> *Id*.

<sup>61</sup> *Id*.

<sup>62 15</sup> U.S.C.S. §§ 7001 et seq.

<sup>&</sup>lt;sup>63</sup> See 15 U.S.C.S. § 7001(a).

<sup>&</sup>lt;sup>64</sup> Cloud Corp. v. Hasbro, Inc., 314 F.3d 289 (7<sup>th</sup> Cir. 2002) (e-mails that exhibit the existence of a contract satisfy the writing and signature requirements of statute of frauds); Roger Edwards, LLC v. Fiddles & Son, Ltd., 245 F. Supp. 2d 251 (D.C. Me. 2003) (e-mails are sufficient to meet the statute of frauds); Cent. Ill. Light Co. v. Consolidated Coal Co., 235 F. Supp. 2d 916 (D.C. Ill. 2002) (e-mails satisfy statute of frauds); see 15 U.S.C.S. § 7001, Interpretive Notes and Decisions (emails between debtor and creditor supplier's agent satisfied writing requirements); but see G.R. Toghiyany v. Amerigas Propane, Inc., 309 F.3d 1088 (8<sup>th</sup> Cir. 2002) (emails are not equivalent of a signature for Missouri statute of frauds).

E-mails are compliant with the applicable rules, regulations and laws, and particularly with the rigid enumerations of the FDCPA, for the following reasons:

First, the use of e-mail complies with the legislative purpose of the FDCPA. Its purpose is "to eliminate abusive debt collection practices by debt collectors...and promote debtors against debt collection abuses." Further, the FDCPA uses broad language as "any medium" which is flexible to adapt to growing technological trends such as electronic mail. Therefore, using e-mail does not contradict its purpose. In fact, e-mail promotes the FDCPA's purpose by providing an easy, efficient, private and less confrontational method by which a creditor or debt collector can communicate with the debtor. Furthermore, it is less invasive and less intrusive to its intending recipient. Hence, the recipient does not feel threatened nor intimidated and most importantly, the outstanding debt is kept confidential between the primary parties.

Second, using e-mail is a win-win situation for everyone (debt collectors, creditors and debtors) because creditors are readily able to communicate with its debtor and debtors are empowered with the choice of where and when to read the e-mail. Thus, the debtor is not taken by surprise from a telephone call or an ad hoc visit from a creditor, who this article has previously mentioned is generally not subject to the FDCPA rules, and who may therefore take more intrusive steps.

#### III. CONCLUSION

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<sup>&</sup>lt;sup>65</sup> 15 U.S.C. § 1692(e).

<sup>&</sup>lt;sup>66</sup> What is meant by this is that the creditor or debt collector is not intruding into the debtor's personal life by contacting the debtor's employer, relatives, or neighbors.

In conclusion, it is clear that the Internet is an expeditiously growing method of communication, whether it is for e-mail, online shopping, or online research. Both the Legislature and the courts have recognized the effectiveness of e-mails and have afforded it the same legal effect and privacy as postal mail. Though the legislature has not addressed whether e-mails may be used in the collection industry, debt collectors and creditors should not preclude its use simply because Legislature is silent. In fact, the collection industry should note that e-mails actually promote the purpose of the FDCPA because it is less confrontational and less abusive. If the law allows creditors to telephone debtors, then is it not thereby permitted that creditors may also e-mail debtors too? E-mails provide the debtor with more power with when to read it and when to reply. However, creditors and debt collectors who remain skeptical about using e-mail to communicate can take additional measures for their protection by using encryption, seeking prior consent, and disclosing the risks. "Courts [and people]...cannot be blind to changes and advances in technology. No longer do we live in a world where communications are conducted solely by mail."<sup>67</sup> Isn't it time we step outside the box?

<sup>&</sup>lt;sup>67</sup> Hollow, 747 N.Y.S.2d at 707.